

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL ACTION

ACRES CAPITAL, LLC, a New York limited
liability company as Administrative Agent,

Plaintiff,

v,

Case No.: 2018-CA-003571

THE BAY CLUB OF NAPLES, LLC, a Florida
limited liability company; THE BAY CLUB OF
NAPLES II, LLC, a Florida limited liability
company; MYLES ALPERT, individually;
HARRY ZEA, as Trustee of the Rohar Trust
dated July 12, 2011; THE OLD COVE
CONDOMINIUM OF NAPLES, INC., a
Florida not-for-profit corporation;
THE BAY CLUB AT OLD NAPLES
CONDOMINIUM ASSOCIATION, INC.,
a Florida not-for-profit corporation,
PINNACLE PROJECT MANAGEMENT, INC.,
a Florida corporation; et al.,

Defendants.

**PLAINTIFF'S EMERGENCY MOTION TO SUBSTITUTE
CHRIS NEILSON AS RECEIVER IN LIEU OF SONEET KAPILA¹**

Plaintiff, ACRES CAPITAL, LLC, a New York limited liability company, as
Administrative Agent ("Plaintiff"), respectively moves this Court to substitute Chris Neilson as
Receiver. As grounds therefore Plaintiff states:

1. This emergency motion is brought before this Court due to the reckless
abandonment by the current Receiver, Soneet R. Kapila ("Kapila") of his duties and

¹ The filing of this motion was necessitated by the Receiver's motion to terminate and abandon the receivership. The motion is conditioned upon the Bankruptcy Court entering an order excusing turnover of the receivership property to the Debtor pursuant to 11 U.S.C. Sec. 543. If that motion is not granted, we will not move forward on this motion without further relief from the Bankruptcy Court. Consistent with the pattern of behavior described below, as of the filing of this motion, ACRES has been provided no information concerning who is in possession of its Collateral.

responsibilities as Receiver and Chief Restructuring Officer (“CFO”) and sole manager of The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC (the “Bay Club Entities”).

2. ACRES was totally blindsided on Monday, June 29, 2020, when counsel for Kapila verbally advised ACRES that Kapila had resigned from his role as CRO and manager of the Bay Club Entities, roles which had been agreed by the parties and was mandated by this Court pursuant to the Agreed Order Appointing Receiver, entered on June 13, 2019 (“Receivership Order”) and the Agreed Order Approving Settlement Agreement, dated June 13, 2019.

3. ACRES seeks to have this Court substitute Chris Neilson in lieu of Kapila to perform the duties and assume the responsibilities of the Receivership Order and the Settlement Agreement which was approved by the Court on June 13, 2019.

4. ACRES has learned that Kapila, without notice to ACRES, engaged in extensive negotiations and entered into a Settlement Agreement, dated June 26, 2020 (the “Secret Agreement”) with Harry Zea and other in which Kapila agreed to resign as the CRO and manager of the Bay Club Entities. A copy of the Secret Agreement is attached hereto as Exhibit “A.”

5. Such resignation is an egregious violation of the Orders of this Court (as more fully outlined below), a violation of the fiduciary duties owed by Kapila to the lender ACRES, and a total malfeasance of his role as Receiver.

6. Kapila’s agreement to resign from his role as CRO and manager of the Bay Club Entities should be declared null and void and of no effect in transferring all control of the Bay Club Entities to Harry Zea and related parties. Kapila was empowered with the roles of CRO and manager only by the Settlement Agreement, the authority of this Court and this Court’s orders. Kapila had no authority or discretion to simply turn over control of the Bay Club Entities to Mr. Zea without approval of this Court, and without notice to and the agreement of ACRES.

7. Due to his purported resignation, which resignation is invalid, Kapila has permitted and otherwise induced Harry Zea (“Zea”) to take unauthorized action on behalf of the Bay Club Entities adverse to safeguarding the assets of the receivership. This is evidenced by Zea filing Chapter 11 bankruptcy petitions on behalf of the Bay Club Entities on June 29, 2020, usurping the powers reserved to Kapila as CRO and as the Receiver. In the bankruptcy petitions, reference was made to the Secret Agreement, which was the first notice to ACRES of the Secret Agreement. ACRES immediately asked for a copy of this Secret Agreement on June 30, 2020. A copy was not provided until the date of filing this Motion. The bankruptcy petition further demonstrates the extreme damage caused by Kapila’s resignation as CRO and manager of the Bay Club Entities. Such resignation has resulted in Harry Zea modifying the operating agreements of the Bay Club Entities, all in derogation of the Settlement Agreement and the Receivership Order.

8. The conduct of Kapila in resigning his role as CRO and permitting the turnover of control of the Bay Club Entities to Mr. Zea is particularly outrageous in that he took the rights of ACRES as provided in the Settlement Agreement and unilaterally exchanged those rights in order to benefit himself personally. In the Secret Agreement, he resigned as CRO and manager in order to obtain a release for himself personally.

9. Also, on June 29, 2020, Kapila through his counsel filed a Motion for Order Discharging Receiver and for Other Relief (“Motion for Discharge”) which comes on the heels of the unauthorized and clandestine Secret Agreement.

10. On June 25, 2020, the day before the execution of the Secret Agreement, counsel for Kapila contacted ACRES’ counsel to advise that Kapila intended to file a motion for discharge. ACRES advised Kapila’s counsel that ACRES absolutely objected to the discharge of Kapila as receiver and requested that the parties discuss Kapila’s desire to withdraw and ways to

accommodate Kapila's concerns. Further, that if such concerns could not be resolved, that ACRES would seek to have a substitute receiver appointed, rather than have Kapila discharged. Kapila and his counsel, however, failed and refused to have such a discussion with ACRES or its counsel, deciding instead to enter into the unauthorized Secret Agreement the next day.

11. Upon a review of the Secret Agreement, it is clear that the reason the Receiver choose not to discuss any matters with counsel for ACRES was because he had already agreed to enter into the Secret Agreement with Harry Zea to turn over control of the Bay Club Entities to Zea.

12. On June 13, 2019, this Court entered the Receivership Order appointing Kapila as Receiver and approving of his dual role as CRO and sole manager of the Bay Club Entities pursuant to the parties' Stipulation for Entry of Agreed Order Appointing Receiver and the terms of the Settlement Agreement approved by this Court's Order entered on June 13, 2019.

13. The Receivership Order charged the Receiver with, among other duties, the responsibility to protect and preserve the real and personal property, intangibles, and other collateral, which is the subject of the above-styled foreclosure action ("Collateral").

14. It is critical that this receivership is preserved and that the responsibilities are performed, including the completion of certain construction necessary for the preservation of the building permit for the North Building. Kapila should not be discharged until such time that there is a substitute receiver appointed and a proper transition of all matters in the receivership is made. Not only must Kapila's resignation as CRO and sole manager be voided,² but many of the

² This matter has accelerated unnecessarily due to the manner in which the Receiver conspired with Mr. Zea for the turnover of control of the Bay Club entities, especially now with the filing of the new bankruptcy petitions at the direction of Mr. Zea. ACRES is evaluating the issue of seeking to have this Court declare that the resignation of Kapila as CRO is void and whether the automatic stay in bankruptcy prevents permitting this Court at this time from issuing a ruling on this issue, even though the resignation as CRO was clearly in derogation of this Court's Orders. Once ACRES has addressed this issue, ACRES will amend or supplement this Motion.

Receiver's responsibilities have yet to be performed. Kapila mistakenly believes that the Receiver's duties have ended because "the completion of the construction of the North Building and marketing and sale of condominium units therein" will no longer be taking place prior to the foreclosure sale. Motion for Discharge at ¶ 2. However, the Receiver has been charged by the Court with additional responsibilities and duties besides construction of improvements. Indeed, protection of the Collateral is one of the **primary** purposes of the Order Appointing Receiver. *See* Order Appointing Receiver at ¶ 12 ("This Receivership Order is intended for the purpose of protecting the collateral at issue in this case . . .").

15. The Receiver was charged with the responsibility and duties to preserve and protect the assets which constitute the Collateral.

16. Although a final judgment of foreclosure has been entered in this case, a foreclosure sale has not yet been completed having been delayed as a result of the Florida Governor's Executive Orders 20-94, 20-121, 20-137, and 20-159 tolling mortgage foreclosure sales until August 1, 2020. Until a foreclosure sale is completed in this action, a Receiver is critically necessary to continue preserving and protecting the Collateral and taking such other actions as set forth in the Order Appointing Receiver.

17. In addition to overseeing construction of improvements on the real property, the Receiver has other responsibilities many of which Kapila has failed to perform. Among other failures, Kapila has:

- a. Failed to collect from the Bay Club Entities and the Guarantors all materials previously purchased by the Bay Club Entities in connection with the Bay Club Entities' construction on the real property including but not limited to, any

products acquired from any Luxe entity and/or stored offsite, pursuant to paragraph 25 of the Order Appointing Receiver;

b. Failed to recover deposits, including but not limited to, the deposit to Commercial Concrete in the approximate amount of \$607,000.00, funded by Plaintiff on or about May 24, 2018, as required by paragraph 25 of the Order Appointing Receiver. Kapila has failed to investigate whether earmarked monies in the above amounts were actually paid to Commercial Concrete, and if so, has failed to make a demand for their return;

c. Failed to perform any forensic accounting regarding the accounts of the Bay Club Entities and the use of the construction proceeds funded by ACRES, as more than \$1,000,000.00 is unaccounted for; and

d. Failed to file with the Court and serve upon all counsel of record, monthly reports, under oath, setting forth all receipts and disbursements, cash flow, and changes in assets in his charge that have occurred during the preceding month, as required by paragraph 15 of the Order Appointing Receiver.

18. Kapila's failures do not end there. Not only has Kapila failed to discharge his duties as Receiver, Kapila's abandonment of his role and duties as CRO and sole manager of the Bay Club Entities is in flagrant violation and disregard of this Court's Receivership Order and the Court's Agreed Order Approving Settlement Agreement.

19. In the Receivership Order, and pursuant to the Settlement Agreement approved by this Court on June 13, 2019—and the only Settlement Agreement which has been approved by the Court---Kapila was appointed by the Bay Club Entities as the CRO and sole manager of the Bay Club Entities. This dual role of the Receiver was expressly recognized in the Receivership Order

and provided for in the Court approved Settlement Agreement. Consistent with the terms of the parties' Settlement Agreement, the Receiver must also serve in the dual role of CRO and sole manager of the Bay Club Entities as recognized in paragraph 17 of the Order Appointing Receiver.

20. Among other things, the Settlement Agreement provides that Soneet Kapila would serve in the dual roles as Receiver for the Bay Club Entities' assets and sole manager/CRO of the Bay Club Entities and that Pinnacle Asset Trust (sole member of the Bay Club Entities) would make no changes to its organizational documents absent an Order from this Court or agreement of ACRES. Specifically, the Settlement Agreement provides that:

Borrower shall be manager controlled and that each Borrower shall appoint Kapila as the sole manager with exclusive control over the Borrowers in lieu of Pinnacle Asset Trust LLC *until the Receiver is discharged by order of the Court in the Litigation or the parties agree otherwise*. The operating agreement of Pinnacle Asset Trust LLC shall be amended to provide that Pinnacle Asset Trust LLC, as the sole member of each Borrower, *shall not make any changes in respect of the appointment of Kapila as the sole manager of each Borrower absent either an Order of the Court in the Litigation or written consent of ACRES and Kapila*.

See Settlement Agreement, at p. 6, ¶ 10 (emphasis supplied).

21. The Settlement Agreement provided for the relevant operating agreements and organizational documents of all entities within the Bay Club Entities' ownership structure to adopt the foregoing provisions so that Zea would be completely removed from the Bay Club Entities' operations.³ The Settlement Agreement provided that any matters relating to the Collateral be "done solely at the direction and authority of Kapila, whether acting as Receiver or sole manager/chief restructuring officer of the [Bay Club Entities], or his successor or designee, and . . . that the principals of the [Bay Club Entities], including Zea and Alpert, or any agents,

³ Removing Mr. Zea from control of the Debtors was a critically important consideration to ACRES in agreeing to the terms of the Settlement Agreement and was a condition for ACRES to enter into the Settlement Agreement.

representatives or others acting on their behalf or at their direction, shall not be involved in any capacity in respect of any action or the exercise of any authority regarding the North Property or the South Property . . . or any other matters.” Settlement Agreement at p. 3, ¶ 2 (emphasis supplied).

22. The Agreed Order Approving Settlement Agreement reserved jurisdiction to enforce the terms of the Settlement Agreement.

23. Moreover, in the event Kapila had any doubt regarding his continuing obligation to act as CRO and sole manager of the Bay Club Entities, he was authorized to seek directions from the Court in order to fulfill his duties under the terms of the Order Appointing Receiver. *See* Order Appointing Receiver at ¶ 15. Instead, Kapila chose the wrong path. His clandestine resignation pursuant to the Secret Agreement without Court order has significantly damaged ACRES, has violated and undermined the Court’s Order approving Settlement Agreement, and has thrown the Receivership into chaos.

24. Due to the egregious breach of trust by Kapila secretly conspiring with Harry Zea to permit Harry Zea to seize control of the Bay Club Entities in violation of the Receivership Order and the Settlement Agreement, ACRES has no confidence that Kapila will properly perform his responsibilities, protect the assets of the receivership or perform his fiduciary duties to the parties. Accordingly, it is imperative that a new receiver be appointed in order to safeguard the assets in the receivership.

25. Plaintiff seeks the appointment of Chris Neilson (“Neilson”), a managing partner with Trigild, Inc. as Receiver in lieu of Kapila. Neilson’s CV and an overview of Trigild, Inc. are attached hereto as Composite Exhibit “B.” Neilson is imminently qualified to assume and

discharge the duties of Receiver in this matter and is immediately available and ready, willing and able to assume those duties, as directed by the Court.

26. Plaintiff moves for entry of an Order to substitute Neilson as Receiver in lieu of Kapila subject to and in accordance with the Receivership Order and the Settlement Agreement, including Neilson assuming the successor role of the CRO as provided in the Receivership Order, the Settlement Agreement and all related documents signed in connection with the Settlement Agreement, together with all the attendant rights, powers, duties, and obligations of the Receiver as set forth in the Receivership Order.

27. Plaintiff further moves the Court to enter an order voiding the purported resignation of Kapila as CRO and sole manager of the Bay Club Entities as in violation of the Court's mandate.

WHEREFORE, Plaintiff requests this Court for entry of an order:

- A. Substituting Chris Neilson as Receiver and CRO in lieu of Kapila in this action;
- B. Amending the Receiver Order in accordance with the relief requested herein; and
- C. To provide such other and further relief as this Court deems just and proper.

DATED this 2nd day of July, 2020.

/s/ Alice R. Huneycutt

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Attorneys for Plaintiff ACRES Capital, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of July, 2020, the undersigned counsel electronically filed the foregoing Emergency Motion to Substitute Chris Neilson as Receiver in Lieu of Soneet Kapila through the Florida Courts E-Portal and served via electronic mail or via U.S. mail.

/s/ Alice R. Huneycutt

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Via U.S. First Class Mail upon:

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Frank Meak 7631 Palmer Court Naples, Florida 34113	Linda Meak 7631 Palmer Court Naples, Florida 34113
The Bay Club at Old Naples Condominium Association, Inc. Attn: Burt L. Saunders, Esq., Registered Agent 3838 Tamiami Trail North, Suite 410 Naples, Florida 34103	The Bay Club of Old Naples Condominium Association, Inc. Attn: Myles Alpert, as President 1001 10 th Avenue South, Suite 104 Naples, Florida 34102

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is made and entered into as of the 26th day of June, 2020, by and among Soneet R. Kapila ("Kapila"), KapilaMukamal, ("KM"), Genovese Joblove & Battista, P.A. ("GJB"), Shumaker Loop & Kendrick, LLP ("Shumaker"); Harry Zea, as Trustee of the Rohar Trust dated July 12, 2011 ("Zea as Trustee"); Harry M. Zea, an individual ("Zea individually") (Zea as Trustee and Zea individually collectively are "Zea"); Alison A. Zea, individually and as Trustee of the Rohar Trust dated July 12, 2011 (collectively, "A. Zea"); Michael S. Marino, as the Independent Trustee of the Rohar Trust dated July 12, 2011 ("Marino"); Myles Alpert, an individual ("Alpert"); Pinnacle Asset Trust LLC, a Florida limited liability company ("Pinnacle Asset"); and Pinnacle Project Management, LLC, a Florida limited liability company ("Pinnacle Project Management") (Zea, A. Zea, Marino, Alpert, Pinnacle Asset and Pinnacle Project Management are collectively referred to herein as the "Zea Parties"). Kapila, KM, GJB, Shumaker and the Zea Parties may each be referred to as "Party" and collectively referred to as "Parties."

RECITALS

A. The Bay Club of Naples, LLC ("Bay Club"), a Florida limited liability company, is the owner of the certain property located at 801 12th Avenue S, Naples, Florida 34102 more particularly described by that certain legal description attached hereto as Exhibit "A" (the "South Property").

B. The Bay Club of Naples II, LLC ("Bay Club II"), a Florida limited liability company (Bay Club and Bay Club II collectively the "Borrowers") is the owner of that certain property located at 1165-1189 8th Street S, Naples, Florida 34102 more particularly described by that certain legal description attached hereto as Exhibit "B" (the "North Property") (the South Property and the North Property collectively the "Property").

C. ACRES Capital, LLC, a New York limited liability company ("ACRES") has sued Borrowers, Guarantors and others to foreclose the Property, recover damages, and for other relief in that certain lawsuit styled *ACRES Capital, LLC v. The Bay Club of Naples, LLC, et al.*, in the Circuit Court of the Twentieth Judicial Circuit, in and for Collier County (the "Court"), Florida, Case No. 18-CA-3571 (the "Litigation").

D. Pursuant to that certain settlement agreement dated May 17, 2019, as amended by the First Amendment to Settlement Agreement dated June 5, 2019 (collectively "Settlement Agreement"), the documents executed and delivered in connection with the Settlement Agreement, Kapila was appointed as the state court receiver over the North Property and the South Property (the "Receiver") as well as the sole manager of the Borrowers (the "Manager") and financial advisor serving as the chief restructuring officer ("CRO").

E. In his capacity as the Receiver, Kapila hired Shumaker as his legal counsel and KM as his financial advisors. In his capacity as Manager of the Borrowers, Kapila caused the Borrowers to hire GJB as counsel to the Borrowers.

F. On January 29, 2020, the Court entered the Stipulated Final Judgment of Foreclosure (the "Initial Final Judgment") and on May 31, 2020, the Court entered an Amended Final Judgment of Foreclosure (the "Amended Judgment") (the Final Judgment and the Amended Judgment are referred to herein as the "Final Judgment").

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree as follows:

1. Authority to Commence Appeal. By signing this Agreement and effectively immediately, Kapila, as manager for Borrowers, authorizes the Borrowers to appeal the Final Judgment in the Litigation and to take all action in connection therewith. The Zea Parties do not and will not oppose the discharge of Kapila as Receiver in the Litigation.

2. Resignations from Borrowers. Effective within two (2) hours after executing this Agreement, Kapila resigns as Borrowers' Manager and CRO, and this Agreement constitutes written notice to Borrowers and Pinnacle Asset that Kapila has resigned. Effective within two (2) hours after executing this Agreement, GJB and KM resign as counsel and financial advisors, respectively, to Borrowers, and this Agreement constitutes written notice to Borrowers and Pinnacle Asset that GJB and KM have resigned. Kapila represents that he makes the decision to resign voluntarily, and free from any influence by any Party.

3. Releases. The Zea Parties each represent and warrant that (i) they have been represented by separate counsel in connection with all of the matters referred to in the Recitals above, (ii) they and their separate counsel have carefully reviewed and were fully informed of their respective rights under all documents executed in connection with the transactions referred to in the Recitals, and (iii) they and their separate counsel have carefully reviewed all of the court filings and other papers filed or served by the Borrowers (through Kapila as Manager) and Kapila as Receiver in the Litigation and in the Bankruptcy Cases. Based on the above and having otherwise taken all steps necessary to inform themselves concerning the Borrowers' conduct, Kapila's conduct, GJB's conduct, Shumaker's conduct and KM's conduct, the Zea Parties hereby represent, warrant and agree that they do not have and are not aware of any factual or legal basis to assert any claim or causes of action against Kapila, GJB, KM or Shumaker. Notwithstanding, as a material inducement to Kapila, KM, GJB and Shumaker to enter into this Agreement, effective automatically as of the date hereof, each of the Zea Parties, on behalf of itself and all of its partners, shareholders, members, managers, officers, directors, employees, agents, attorneys, legal representatives, trusts, trustees, heirs, estates, parents, subsidiaries, affiliates, predecessors, successors and assigns and anyone claiming by, through or under them (collectively, the "Zea Releasing Parties"), hereby fully and forever remises, releases, acquits, waives, disclaims, surrenders, satisfies, and discharges each of Kapila, KM, GJB and Shumaker (collectively, the "Professionals") and each of the Professionals' respective partners, shareholders, members, managers, officers, directors, employees, agents, attorneys, legal representatives, trusts, trustees,

heirs, estates, parents, subsidiaries, affiliates, predecessors, successors and assigns and anyone claiming by, through or under them, (collectively, the "Professional Released Parties") of and from any and all manner of debts, equity or ownership interests, rights, dues, sums of money, accountings, bonds, warranties, representations, covenants; promises, contracts, controversies, agreements, liabilities, obligations, reckonings, expenses, damages, judgments, executions, objections, defenses, setoffs, actions, liens, suits, proceedings, claims, counterclaims, losses, costs, expenses, attorneys' fees, demands, and causes of action of any kind or nature whatsoever, whether contingent, whether disputed or undisputed, whether or not well-founded in fact or law, whether in law, equity or otherwise, whether known or unknown, and whether now accrued or hereafter maturing, which any of the Zea Releasing Parties ever had, now have or hereafter can, shall or may have against any of the Professional Released Parties, from the beginning of the world until the date hereof, for or by reason of any matter, cause, omission, or thing whatsoever, including, but not limited to, any matter, cause, omission, or thing, including any such matter, cause, omission or thing arising out of or in connection with Bay Club, Bay Club II, the North Property, the South Property, the Settlement Agreement, the Bankruptcy Cases, the Litigation, the Final Judgment, ACRES, and/or the operation of the business of Bay Club and/or Bay Club II, including in respect of any and all of the actions and/or omissions of any of the Professional Released Parties in connection with any of the foregoing; and, further, the Zea Releasing Parties do hereby covenant and agree never to institute or cause to be instituted or continue prosecution of any lawsuit, arbitration or other form of action or proceeding of any kind or nature whatsoever against any of the Professional Released Parties by reason of, related to, arising out of, or in connection with any of the foregoing released claims. The release specified in this Section 3 includes, without limitation, a release of all claims for injunctive relief, specific performance, declaratory judgment, accounting, compensatory damages, punitive damages, or damages or equitable relief of any nature, based on any theory of recovery, which the Zea Releasing Parties have or which may hereafter accrue or otherwise be acquired, including, without limitation, claims for attorneys' fees and costs. Nothing contained in this Section 3 or elsewhere in this Agreement shall release the Professionals from their respective covenants, obligations, duties and agreements set forth in this Agreement. Each of the Zea Releasing Parties, after consulting legal counsel, understands and acknowledges the significance and consequence of the specific intention herein to release all claims against the Professional Released Parties, and hereby assumes full responsibility for any injuries, damages, or losses that it may incur from the foregoing release.

4. Authority. Each of the Parties represents and warrants that (i) he, she or it has the requisite power and authority to execute and deliver this Agreement; (ii) the execution and delivery of this Agreement by such Party have been duly authorized by all requisite action(s) and create valid and binding obligations of such Party, enforceable in accordance with their respective terms; (iii) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby or thereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree or other restriction of any governmental authority or conflict with, result in a breach of, or constitute a default under any contract, lease, license instrument or other arrangement to which such Party is bound; and (iv) he, she or it is authorized to execute this Agreement on behalf of its partners, shareholders, members, managers, officers, directors, employees, agents, legal representatives, trustees, heirs, estates, parents, subsidiaries, Affiliates, predecessors, successors and assigns and anyone claiming by, through or under them. As to the Rohar Trust, each of Zea, A. Zea and Marino represent and warrant that they are the only three

trustees of the Rohar Trust and that no other consents are necessary to bind the Rohar Trust to the terms and conditions of this Agreement.

5. **Choice of Law.** The Agreement shall be governed by Florida law.

6. **Entire Agreement; No Oral Agreements.** This Agreement supersedes all previous contracts or understandings, including any offers, letters of intent, term sheets, proposals or letters of understanding, and constitutes the entire agreement of whatsoever kind or nature existing between or among the Parties respecting the within subject matter, and no Party shall be entitled to benefits other than those specified herein. As between or among the Parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect. The Parties specifically acknowledge that in entering into and executing this Agreement, the Parties rely solely upon the representations and agreements contained in this Agreement and any certificates and other documents being executed and delivered in connection herewith. The Parties expressly acknowledge and agree they have no oral agreements with each other relating to any of the obligations contained herein and shall not be bound by any agreement related hereto unless such agreement is set forth in writing and is duly executed by the appropriate parties.

7. **Waiver of Jury Trial.** NO PARTY TO THIS AGREEMENT, NOR ANY ASSIGNEE, SUCCESSOR, HEIR OR PERSONAL REPRESENTATIVE OF ANY PARTY TO THIS AGREEMENT, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THIS AGREEMENT; OR IN ANY MANNER REGARDING THE RELATIONSHIP OR CONDUCT BY AND BETWEEN THE PARTIES WHETHER AT LAW, (INCLUDING BUT NOT LIMITED TO CAUSES OF ACTION ARISING IN CONTRACT OR TORT), OR EQUITY. EACH PARTY HERETO EXPRESSLY WAIVES SUCH RIGHT TO A JURY TRIAL. NO PARTY TO THIS AGREEMENT WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED AND DISCUSSED BY THE PARTIES HERETO, AND THE PROVISIONS HEREOF SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

8. **Voluntary Execution.** The Parties each acknowledge, represent, warrant, and confirm that (i) they have carefully read and understand the effect of this Agreement and have had the assistance of separate legal counsel in carefully reviewing, discussing, and considering all terms of this Agreement; (ii) their execution of this Agreement is not based on any reliance on any representation, understanding or agreement not expressly set forth herein, and neither Party has not made any representations to any other Party not expressly set forth herein; (iii) they hereby execute this Agreement as their free and voluntary act, without any duress, coercion or undue influence exerted by or on behalf of any other Party; and (iv) this Agreement constitutes the entire agreement between the Parties hereto. This Agreement also embodies the entire agreement regarding the respective rights, obligations, and liabilities of the Parties and supersedes all prior agreements and understandings, if any, relating to the subject matter.

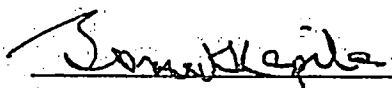
9. No Duress. Each of the Parties acknowledge that he, she or it (i) executed this Agreement without any threat, force, fraud, duress or representation of any kind by any person whatsoever or any other Party hereto, and (ii) is aware of the rights to which he, she or it was otherwise entitled. Each of the Parties represents and warrants that he she or it has had a full and adequate opportunity to investigate the nature and extent of the claims each has against the other Parties and has decided to enter into this Agreement. Each Party further acknowledges that, at the time of the execution of this Agreement, he, she or it was completely capable of understanding the character of his, her or its acts and deeds and was in complete charge of all of its faculties and capable of executing this Agreement and of understanding the significance of his, her or its acts. Each of the Parties hereby represents and warrants that he, she or it has had the opportunity to have full and appropriate representation by counsel of his, her or its own choice and that after a consultation with its attorneys, after being duly apprised of its rights with respect to this Agreement and after having read this Agreement line by line, each freely accepts the terms, conditions and provisions hereof and enters into this Agreement voluntarily and without any coercion or constraint.

10. Sole Owner of Claims. The Parties represent and warrant that the entities and individuals signing this Agreement are the sole owners of the actual or alleged claims, demands, rights, causes of action and other matters which are herein released, that the same have not been assigned, transferred or disposed of and that they have the full right and power to grant, execute and deliver the releases and agreements herein contained.

11. No Amendment or Assignment. This Agreement may be amended, supplemented, or modified only upon an agreement in writing executed by all of the Parties, and then only to the extent as set forth in such written amendment, supplement, or modification. Other than as specifically provided for in this Agreement, this Agreement and the rights and obligations hereunder may not be assigned by any of the Parties without the prior written consent of all of the other Parties.

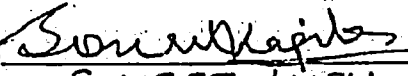
12. Attorneys' Fees and Costs. Each Party shall bear and be responsible for any and all fees, costs and expenses incurred by such Party in connection with the negotiation and consummation of the transactions contemplated by this Agreement. In the event a Party elects to incur legal expenses to enforce or interpret any provision of this Agreement by judicial proceedings, the prevailing Party will be entitled to recover from the non-prevailing Party such legal expenses, including reasonable attorneys' fees, costs, and necessary disbursements at all court levels, in addition to any other relief to which such Party shall be entitled to hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

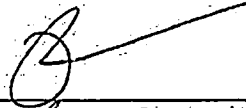


Soneet R. Kapila, Individually

KAPILA MUKAMAL

By: 
Name: SONEET KAPILA
Title: Partner.

GENOVESE JOBLOVE & BATTISTA, P.A.

By: 
Name: Paul J. Battista
Title: President

SHUMAKER LOOP & KENDRICK, P.A.

By: _____
Name: _____
Title: _____

HARRY M. ZEA, as Trustee of the Rohar Trust
dated July 12, 2011

HARRY M. ZEA, individually

ALISON A. ZEA, as Trustee of the Rohar Trust
dated July 12, 2011

ALISON ZEA, individually

Soneet R. Kapila, Individually

KAPILA MUKAMAL

By: _____

Name:

Title:

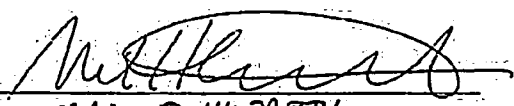
GENOVESE JOBLOVE & BATTISTA, P.A.

By: _____

Name:

Title:

SHUMAKER LOOP & KENDRICK, P.A.

By:  _____

Name: MARK D. HILPRETH

Title: PARTNER

HARRY M. ZEA, as Trustee of the Rohar Trust
dated July 12, 2011

HARRY M. ZEA, individually

ALISON A. ZEA, as Trustee of the Rohar Trust
dated July 12, 2011

KAPILA MUKAMAL

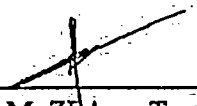
By: _____
Name: _____
Title: _____

GENOVESE JOBLOVE & BATTISTA, P.A.

By: _____
Name: _____
Title: _____

SHUMAKER LOOP & KENDRICK, P.A.

By: _____
Name: _____
Title: _____



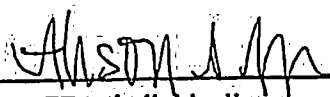
HARRY M. ZBA, as Trustee of the Rohar Trust
dated July 12, 2011



HARRY M. ZBA, individually



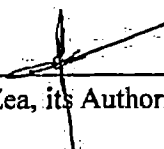
ALISON A. ZEA, as Trustee of the Rohar Trust
dated July 12, 2011


ALISON ZEA, individually

MYLES ALPERT, individually

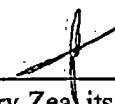
MICHAEL S. MARINO, as Trustee of the Rohar Trust
dated July 12, 2011

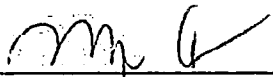
PINNACLE ASSET TRUST, LLC, a Florida limited
liability company

By: 
Harry Zea, its Authorized Agent

PINNACLE PROJECT MANAGEMENT, INC.,
a Florida corporation

By: Pinnacle Asset Trust LLC, a Florida
limited liability company, its President

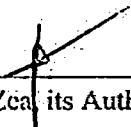
By: 
Harry Zea, its Authorized Agent



MYLES ALPERT, individually

MICHAEL S. MARINO, as Trustee of the Rohar Trust
dated July 12, 2011

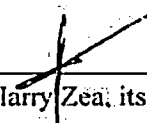
PINNACLE ASSET TRUST, LLC, a Florida limited
liability company

By: 

Harry Zea, its Authorized Agent

PINNACLE PROJECT MANAGEMENT, INC.,
a Florida corporation

By: Pinnacle Asset Trust LLC, a Florida
limited liability company, its President

By: 

Harry Zea, its Authorized Agent

MYLES ALPERT, individually

A handwritten signature in black ink, appearing to read "Michael S. Marino", written over a horizontal line.

MICHAEL S. MARINO, as Trustee of the Rohar Trust
dated July 12, 2011

PINNACLE ASSET TRUST, LLC, a Florida limited
liability company

By: _____
Harry Zea, its Authorized Agent

PINNACLE PROJECT MANAGEMENT, INC.,
a Florida corporation

By: Pinnacle Asset Trust LLC, a Florida
limited liability company, its President

By: _____
Harry Zea, its Authorized Agent

CHRIS NEILSON, *Managing Partner*

Chris Neilson, J.D., Managing Partner, has more than 14 years of experience in the CRE industry. A licensed attorney, Neilson oversees Trigild's business operations and serves as the firm's principal receiver. Federal and state courts throughout the United States have appointed Neilson as receiver over all types of commercial properties, from offices, malls, and shopping centers to apartments, hotels, and golf courses. Neilson is also an approved fiduciary in the State of New York.

In addition to his receivership work, Neilson has handled the resolution of millions of dollars of unsecured judgments against debtors throughout the U.S. and has sourced and secured debtor-in-possession financing for fiduciaries through bankruptcy.

Neilson is a founding partner of P.D. Capital, a commercial real estate investment company focused on acquiring value-add retail projects. At P.D. Capital, Neilson has been instrumental in the acquisition, management, and ultimate disposition of over 1,000,000 square feet of commercial properties.

Neilson began his legal career as an attorney practicing in the real estate and capital markets groups of an AmLaw 100 law firm where he focused on complex loan workouts for securitized business trusts (REMICs) through their special servicers.

Neilson received his J.D. from the Southern Methodist University Dedman School of Law where he was a member of the SMU Law Review and received a B.B.A. from Baylor University where he was the Outstanding Graduating Senior of the Hankamer School of Business.

COMPOSITE EXHIBIT "B"

DALLAS OFFICE

4131 North Central Expressway
Suite 775
Dallas, Texas 75204
214/422/2365

SAN DIEGO OFFICE

9339 Genesee Avenue
Suite 130
San Diego, California 92121
858/242/1222

TRIGILD OVERVIEW

Trigild has successfully handled over 1,000 court-appointed fiduciary assignments throughout the country, operated multimillion dollar businesses, and liquidated billions of dollars of business, real estate, FF&E, and related assets. We have served in multiple roles under the auspices of numerous courts – including as Receiver, Bankruptcy Trustee, and Chief Restructuring Officer. Equipped with decades of experience, Trigild is an expert at devising long-term solutions and sound strategies that maximize recovery.

Fiduciary Team Experience

- Since 1988, Trigild has handled over 1,000 receivership appointments for over 2,700 real estate and business assets.
- Receiver professionals include Attorneys at Law who are admitted to the California and Texas bars, Licensed Real Estate Brokers, Paralegals, MBAs, and CPAs who are supported by in-house accounting, operations, marketing, HR and IT professionals.
- Serving as federal equity receiver on a filing by the Securities and Exchange Commission (SEC) for an alleged Ponzi scheme.
- Served as receiver in 41 different states and Puerto Rico and the Virgin Islands with an aggregate value of nearly \$50 billion.
- State and federal receiverships for hotels, restaurants, convenience stores, multifamily, office, industrial, retail, gas stations, truck stops, apartments, office buildings, assisted care facilities, retail centers, mobile home parks, residential sub divisions, marinas, self-storage units, senior care and a water park.
- Approved as Receiver by the State of New York Unified Court System
- As receiver, has directed the sale of over 300 properties.
- General Counsel has extensive legal, financial and real estate experience with significant transactional and litigation knowledge, including contract drafting and negotiation, processing of entitlements, alternative dispute resolution and trial work.
- 40-year-old property management firm specializing in distressed properties and operating businesses located throughout the United States.
- Trigild's staff has done expert witness work in matters concerning hotel liability, security, feasibility studies, "slip and fall", wrongful termination, value of leased premises, safety standards and operating performance.
- Bondable for virtually any dollar amount required.
- Frequent speakers to professional financial and legal groups on foreclosure and uses of receiverships.
- Host of the Trigild Lender Conference and Trigild Spring Conference - annual educational conferences on the latest trends for handling non-performing commercial loans.
- Publisher of the *Trigild Deskbook*, a state-by-state guide to Receivership and Foreclosure laws-by-state guide to Receivership and Foreclosure laws.

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FLORIDA

Commercial

- Anastasia Shores (St. Augustine)
- Baldwin Park Office Buildings (Orlando)
- Best Choice Collision (Orlando)
- Best Cleaners Retail Center (Deland)
- Best Cleaners Retail Center (Orlando)
- Blanding Place Apartments (Orange Park)
- Bluff House Condominiums (Orange Park)
- Canal Grove (Danie Beach)
- Caroline Court Apartments (Tavares)
- Commercial Place Office Buildings (Ft. Lauderdale)
- Congress Park Office (Delray Beach)
- Cypress Bay (Ft. Pierce)
- Ginger Ridge Apartments (Tavares)
- Hemingway Estates (Apollo Beach)
- International Promenade (Kissimmee)
- Jacksonville Office/Industrial Complex (Jacksonville)
- Keston Park Apartments (Kissimmee)
- Lexon Residential Homes (St. Cloud)
- Okaloosa Industrial (Crestview)
- Olive Road Mini Storage (Pensacola)
- P & C Grocers (Cottdondale)
- P & C Grocers (Marianna)
- Plaza North Office Park (Altamonte Springs)
- Premier Meats I (Jacksonville)
- Premier Meats II (Jacksonville)
- Redfish Villas (Englewood)
- Skyline Office Building (St. Petersburg)
- Sun Lake Resort (Kissimee)
- Westmarket (Apopka)
- Westgate Square Shopping Center (Orlando)
- Wickshire on Lane Apartments (Jacksonville)

Hospitality / Enterprise

- America's Best Inn (Pensacola)
- Best Western Inn (Kissimmee)
- Checker's Portfolio
- Denny's Portfolio
- Dixie Truck Stop (Hillsborough County)
- Econolodge (Kissimmee)
- Hardee's (Gainesville)
- Hardee's (Jasper)
- Hardee's (Inverness)
- Hardee's (Ocala)
- Hardee's (Palatka)
- Oak Hills Golf Course (Spring Hill)
- P&C Grocery (Cottdondale)
- P&C Grocery (Marianna)
- Petrol Mart (Plant City)
- Petrol Mart (San Antonio)
- Petrol Mart (Zephyrhills)
- Petrol Mart (Polk City)
- Residence Inn by Marriott (Tampa)
- RPK Amoco Gas & Convenience (Orange Park)
- Run In Foods (Hillsborough County)
- Run In Foods (Plant City)
- Run In Foods (Polk City)
- Run In Foods (San Antonio)
- Run In Foods (Zephyrhills)
- Sense Hotel (Miami)
- Sizzlers Restaurant (Kissimmee)
- Sizzlers Restaurant (Orlando)
- St. Johns Suites (Jacksonville)
- Steak and Ale Restaurant (St. Petersburg)
- Travelodge by Wyndham (Orlando)
- Treasure Island (Daytona Beach Shores)

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